TOURO LAW
Touro College Jacob D. Fuchsberg Law Center

Touro Law Review

Volume 12
Number 3 *New York State constitutional Decisions: 1995 Compilation*

Article 20

1996

Equal Protection

have developed student bodies unequal in their racial and ethnic composition."[33]

SECOND DEPARTMENT

Abberbock v. County of Nassau[34]
(decided March 29, 1995)

The plaintiffs sought an order pronouncing three ordinances passed by Nassau County, freezing and cutting salaries of management/confidential nonunion workers and increasing salaries of non-management/confidential union workers, unconstitutional[35] on the grounds that the ordinances violated the Equal Protection Clauses of the Federal[36] and New York State Constitutions.[37] The court held that the ordinances did not violate the Equal Protection Clauses of either the Federal or New York State Constitutions because, under the rational basis test, the economic classification made between nonunion and union employees was presumed to be rationally related to the furtherance of a legitimate goal of the County of Nassau and as such, the ordinances represented a valid exercise of Nassau County's legislative authority.[38]

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33. *Id.*

34. 213 A.D.2d 691, 624 N.Y.S.2d 446 (2d Dep't 1995).

35. *Id.* at 691, 624 N.Y.S.2d at 447.

36. U.S. CONST. amend. XIV, § 1. The Fourteenth Amendment provides in pertinent part: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." *Id.*

37. N.Y. CONST. art. I, § 11. This section provides in pertinent part: "No person shall be denied the equal protection of the laws of this state or any subdivision thereof." *Id.*

38. *Abberbock*, 213 A.D.2d at 691-92, 624 N.Y.S.2d at 447. In addition, the plaintiffs claimed that the ordinances violated section 1307 of the Nassau County Charter, which requires "salaries to be standardized 'so that, *as near as may be*, equal pay may be given for equal work . . . .'" *Id.* at 692, 624 N.Y.S.2d at 448 (emphasis in original) (citation omitted). The appellate division determined that the charter had not been violated because "[t]he general principal of 'equal pay for equal work' need not be applied in all circumstances." *Id.*

In this action, the plaintiffs appealed from an order of the Nassau County Supreme Court, which granted the defendant's motion for summary judgment.[39] The court declared that the decision to freeze and decrease the salaries of particular management/confidential nonunion workers and to increase salaries for non-managerial/confidential union workers was constitutional.[40]

In affirming the decision of the lower court that the ordinances were constitutional, the appellate division asserted that, under both the New York State and Federal Constitutions, the proper standard of review to be applied to an economic classification when it is challenged under the Equal Protection Clause is the "rational basis" standard,[41] enunciated in *New York City Managerial Employees Association v. Dinkins*.[42] The rational basis test has evolved from extensive federal[43] and state case law,[44] and has two prongs: "(1) the challenged action must have

39. *Id.* at 691, 624 N.Y.S.2d at 447.

40. *Id.*

41. *Id.*

42. 807 F. Supp. 958, 964-65, 975 (S.D.N.Y. 1992) (noting that rational basis review is applicable to economic classifications and concluding that legislative action which imposed salary freezes and cuts on managerial employees but increased salaries of non managerial employees did not violate equal protection or due process).

43. *Id.* at 965. *See* Western & S. Life Ins. Co. v. State Bd. of Equalization, 451 U.S. 648, 668-74 (1981) (utilizing rational basis review in holding that a retaliatory tax imposed by the State of California did not violate the Equal Protection Clause); Schweiker v. Wilson, 450 U.S. 221, 223, 234-35 (1981) (applying rational basis review to determine the constitutionality of the classifications established to determine eligibility for supplemental security benefits created by the Social Security Act).

44. *See* Matter of Doe v. Coughlin, 71 N.Y.2d 48, 56-61, 518 N.E.2d 536, 541-44, 523 N.Y.S.2d 782, 787-90 (holding that under the rational basis test, a rational basis existed for preventing a prisoner with AIDS from participating in the prison conjugal visit program), *cert. denied*, 488 U.S. 879 (1987); Matter of Abrams v. Bronstein, 33 N.Y.2d 488, 490-94, 310 N.E.2d 528, 529-31, 354 N.Y.S.2d 926, 928-30 (1974) (stating that in order to determine that lieutenants of the New York City police department had not been denied equal protection when they were refused retroactive salary increases that were given to other lieutenants similarly situated, it must be shown that the classification being made "rests 'upon some ground of

a legitimate purpose and (2) it must have been reasonable for the legislators to believe that the challenged classification would have a fair and substantial relationship to that purpose."[45] In addition, the court determined that an economic classification would pass rational basis review "if any set of facts reasonably may be conceived to justify it."[46] Moreover, the court noted that the ordinances enacted by the defendants were presumed to be rational and could "only be overcome by a clear showing of arbitrariness and irrationality."[47]

To support its reasoning, the court cited the decision of the United States Supreme Court in *Hodel v. Indiana*.[48] In *Hodel*, the Court stated that "[s]ocial and economic legislation . . . that

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difference having a fair and substantial relation' to the object for which it is proposed") (citations omitted); Matter of Arnold v. Constantine, 164 A.D.2d 203, 206, 563 N.Y.S.2d 259, 261 (3d Dep't 1990) (stating that "[f]or equal protection purposes, the appropriate standard for judicial review of a regulation . . . is that it be sustained unless it bears no rational relation to a legitimate government interest" in determining that the actions of a police superintendent, in reclassifying entry-level appointees to an aviation unit of state police as troopers instead of technical sergeants, did not violate appointee's equal protection rights).

45. *Abberbock*, 213 A.D.2d 691, 691, 624 N.Y.S.2d 446, 447 (2d Dep't 1995). *See Dinkins*, 807 F. Supp. at 965 (stating that in order to satisfy rational basis review, "the challenged action must have a legitimate purpose and . . . it must have been reasonable for the lawmakers to believe that use of the challenged classification would promote that purpose"). Note that the appellate division requires the relationship between the classification and the purpose of the legislation to be fair and substantial, while the district court merely requires the purpose to be promoted by the classification.

46. *Abberbock*, 213 A.D.2d at 691, 624 N.Y.S.2d at 447. In making this assertion, the appellate division cited to *Dinkins*, 807 F. Supp. at 965 (citing McGowan v. Maryland, 366 U.S. 420, 426 (1961)).

47. *Abberbock*, 213 A.D.2d at 691, 624 N.Y.S.2d at 447 (citing Hodel v. Indiana, 452 U.S. 314, 331-32 (1981)). *See* Matter of Subway Surface Supervisors Ass'n v. New York City Transit Auth., 56 A.D.2d 53, 59, 392 N.Y.S.2d 460, 464-65 (2d Dep't 1977) (stating that a "classification of economic interests relates neither to suspect categories nor to fundamental rights" in determining that rational basis review should be applied to decide whether or not an economic classification is constitutional), *modified on other grounds*, 44 N.Y.2d 101, 375 N.E.2d 384, 404 N.Y.S.2d 323 (1978).

48. 452 U.S. 314 (1981).

does not employ suspect classifications or impinge on fundamental rights must be upheld against equal protection attack when the legislative means are rationally related to a legitimate governmental purpose."[49] In addition, the Supreme Court asserted that "social and economic legislation is valid unless 'the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that [a court] can only conclude that the legislature's actions were irrational.'"[50]

Upon implementing the two-prong test, the court in *Abberbock* concluded that Nassau County had a legitimate purpose for passing the ordinances.[51] In addition, it determined that a rational relationship existed between the economic classification made distinguishing union from nonunion employees and the defendant's legitimate governmental interest in making the classification.[52] The court based its decision on the failure of the plaintiff to show that the economic classifications were "so unrelated to the achievement of any combination of legitimate purposes that the court [could] only conclude that their actions were irrational."[53] Furthermore, the court asserted that although a law makes an imperfect classification, it does not necessarily mean that the legislature has violated the Constitution's equal protection guarantee.[54]

The Appellate Division, Second Department utilized the rational basis test, which it adopted from federal case law, to determine whether the economic classification made in this case was constitutional.[55] Further, the court relied on federal case law to illustrate the reasoning behind its presumption that the economic classification was rational, and that imperfect

49. *Id.* at 331.

50. *Id.* at 332 (quoting Vance v. Bradley, 440 U.S. 93, 97 (1979)).

51. *Abberbock*, 213 A.D.2d at 692, 624 N.Y.S.2d at 447.

52. *Id.*

53. *Id.*

54. *Id. See* Gregory v. Ashcroft, 501 U.S. 452, 473 (1991) (stating that a "State 'does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect'") (citations omitted).

55. *Abberbock*, 213 A.D.2d at 691, 624 N.Y.S.2d at 447.

classifications may nonetheless be legitimate.[56] In addition, the court adopted the federal standard indicating that under rational basis review, any conceivable set of facts will be acceptable to warrant the classification.[57] Thus, it determined that where a plaintiff fails to overcome the nearly insurmountable burden of showing the classification was wholly irrational, the equal protection claim will fail.[58] The court concluded that the plaintiffs did not meet that burden in the case at hand, and therefore the ordinances were constitutional under both the Federal and the New York State Constitution.[59]

FOURTH DEPARTMENT

Burke v. Crosson[60]
(decided March 17, 1995)

The plaintiffs, county court judges in Onondaga County, claimed that the salary structure of the Judiciary Law section 221-d[61] violated their equal protection rights under the New York State[62] and Federal[63] Constitutions by creating an inequality between their compensation and the compensation received by county court judges serving in thirteen other counties.[64] The Appellate Division, Fourth Department held that the plaintiffs' equal protection rights had been violated because

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.* at 691-92, 624 N.Y.S.2d at 447.

60. 213 A.D.2d 963, 623 N.Y.S.2d 969 (4th Dep't 1995).

61. N.Y. JUD. LAW § 221-d (McKinney Supp. 1995). Judiciary Law § 221-d lists the annual salaries of county court judges of New York State by county. *Id.*

62. N.Y. CONST. art. I, § 11. This section provides in pertinent part: "No person shall be denied the equal protection of the laws of this state or any subdivision thereof." *Id.*

63. U.S. CONST. amend XIV, § 1. The Fourteenth Amendment states in pertinent part: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." *Id.*

64. *Burke*, 213 A.D.2d at 963, 623 N.Y.S.2d at 969-70.